

**THE LAW OFFICES
OF
ANDREW S. DONNER**

Telephone: (516) 605-1108 Fax: (516) 605-1084

25 NEWBRIDGE ROAD.
SUITE 420
HICKSVILLE, NEW YORK 11801

ALSO ADMITTED IN ARIZONA

E-mail: asdlaw@aol.com
98 CUTTER MILL ROAD
GREAT NECK, NY 11021
(BY APPOINTMENT ONLY)
Address all correspondence to: Plainview

Of counsel:
HILLARY B. BLUMENTHAL
KEITH LEPACK
DAN BUTTAUFUOCO
CHRISTOPHER J. LITREL

June 17, 2009
Honorable Kathleen Tomlinson
U.S. Magistrate Judge
U.S. District Court, E.D.N.Y.
100 Federal Plaza
Central Islip, New York 11722-9014

Re: Chord Associates, LLC *et al.* v. Protech 2003-D, LLC *et al.*
EDNY Case No. 07 CV 5138 (JFB)

Dear Judge Tomlinson:

I write in response to Defendants' counsels' letter (Docket No.:114) ostensibly seeking "to supplement Defendant's motions to compel."

Notwithstanding counsels characterization of their intent, the content and substance of the correspondence seeks to raise a new issue, to wit, Defendants desire to depose Plaintiff Barbara Saepia for a fourth day. To attempt to add that matter to the Courts docket for consideration merely forty eight hours prior to the currently scheduled hearing gives rise at the very least to the motivation in so doing. Searching the transcript of a three day deposition, to specifically refute most, if not all of defendant's contentions is an arduous task that should not have to be accomplished in such limited time. That said, I will make every attempt to at the very least, set the record straight clarify Defendants omissions and address their errors and misstatements.

Counsel contends "Plaintiff improperly cut the deposition short...". The video and written transcript of the depositions are un rebuttable evidence that contrary to counsels assertions there were neither lengthy speaking objections (and for that matter very few objections at all) nor obstruction by the witness. The record will lay bare proof that the witness kept her composure in the face of badgering that included being asked basically the same question approximately eighteen times at the end of an eight and one-half hour deposition on the third day of her testimony (pages 257-266 of the deposition are attached). Again, the record will reveal that contrary to counsels assertions plaintiff did not "largely give "I do not recall" answers and on the

occasions when she did they were truthful and responsive answers. This is in sharp contrast to, for example, Defendants witness Frank Guzauskas who responded to my inquiries in excess of **two hundred sixty times**, that he “did not recall”. That being said, on more than one occasion counsel admonished the witness that she could answer, yes, no, or I don’t recall and on at least one occasion when the witness responded that she could not recall, counsel badgered the witness, sarcastically asking “do you know the difference between I don’t recall and no...?”, after asking the same question numerous times. (see transcript pages 240-244).

Counsel goes on to contend that “Plaintiffs appear to be raising a defense of reliance on counsel in connection with, among other things, their failure to sign the extension agreement...” The witness was asked about her decision not to sign the Fannie Mae extension in excess of twenty times, eighteen in succession at the end of the deposition (transcript pages 257-266) and she answered consistently and non-evasively despite counsels badgering and attempts to put words in her mouth and otherwise trick her. There is absolutely no attempt to hide behind privilege in the witnesses responses to why she didn’t sign the Fannie Mae letter. For reasons of her own, counsel has chosen to offer the court limited disjointed statements, taken out of context. I have attempted to offer the Court a more complete depiction and offer the Court the full transcript should they so desire.

In a footnote, counsel contends “According to the court certified videographer, Ms. Saepia testified for 4 hours and 52 minutes the first day and less than 7 hours on the second and third days.” While I will assume for the moment that that is what the videographers’ record shows, it is not an accurate representation of Ms. Saepias availability. The building records will show that on each of the three days we appeared at Defendants offices prior to ten o’clock a.m. and the witness was prepared to be deposed. Defendants delayed the beginning of each day of testimony as they put together their files and conferred together and with their client. In addition, Defendants quite frequently requested and/or extended interim and lunch breaks to confer internally, requesting that the witness and I remain outside the conference area as a courtesy. I refer to this at some point(s) of the transcript. While it is clearly counsels’ prerogative to do so, it should not be an excuse to extend the witnesses deposition time, particularly given how extensive the time was. While I advised counsel early in the course of Tuesday’s deposition that I had to leave at about 6:00 P.M. so I could return to Long Island for a 7:30 meeting, I offered to extend the hours on Wednesday and Thursday and did so. The record will reflect that it was counsel who chose to end Wednesdays deposition, though I offered to allow her to continue somewhat longer (we ended at approximately 6:30 P.M.), and on Thursday we again ended at about 6:30 P.M. Counsel will acknowledge, and the record will reflect, that the witness was available for 7.5 hours of testimony on Tuesday, 8.5 on Wednesday and 8.5 on Thursday. Assuming reasonable breaks, she was available for in excess of the 21 hours the rules call for. That counsel and defendants chose to utilize some of that time to strategize privately should not be the basis to further inconvenience the witness, particularly when counsel is conceding she testified for at least 19 hours.

Finally, counsels contention that the witness “put the communication at issue with respect to the claim or defense” is contradicted, on at least 20 occasions, by the testimony of the witness who was quite clear, consistent and forthright on the subject both in her testimony, and by the letter counsel refers to. It is apparent from the record that rather than seek to elicit truthful

testimony, counsel badgered the witness in an attempt to create a false controversy. Her reference to counsels' retainer letter as it pertains to the Fannie Mae extension is misstated as well. Counsels demand for production of all communications with counsel is rather transparent, but, none-the-less something Plaintiff might stipulate to if all parties were similarly directed.

Accordingly, defendant's demands, to the extent they are being demanded for the first time in their letter motion (Docket 114), should be denied as untimely and/or should be denied for the reasons set forth herein.

Very truly yours,

Andrew S. Donner

cc: Catherine McGrath, Esq.

1

2 Did you respond?

3 A. I don't recall that I responded.

4 Q. In fact did you deliberately not

5 respond?

6 A. I don't recall that I responded

7 to this e-mail.

8 Q. I'll put the question to you

9 again, was it the case that you deliberately

10 did not respond?

11 A. I will answer I did not respond

12 to this e-mail. I don't recall responding to

13 this e-mail.

14 Q. It was your intention that you

15 did not respond?

16 A. I'll say I don't recall

17 responding to this e-mail.

18 Q. Was it one of those things you

19 said I'll get around to responding to it and

20 you forgot to do so?

21 A. I had discussions with counsel

22 regarding this e-mail so I didn't --

23 Q. There after you did not respond

24 to this e-mail?

25 A. I don't recall responding to

1

2 this e-mail.

3 Q. You don't recall responding to
4 it because you didn't, correct?

5 A. I said I don't recall responding
6 to this e-mail.

7 Q. Are you telling me it's possible
8 that you did and you just don't recall?

9 A. Are you asking me for
10 conversations I had with counsel regarding
11 this whole issue?

12 Q. I'm asking if it's possible in
13 your mind that you did respond to this e-mail
14 and you just don't recall it?

15 A. Well, I will say again I will
16 say I don't recall responding to this e-mail.

17 Q. Do you know the difference
18 between I don't recall and no as answers to
19 questions?

20 MR. DONNER: Let's stop you on
21 this line. You are now badgering the
22 witness. You said a dozen times today

23 you could say yes, no or I don't recall

24 and when the witness says I don't

25 recall and you try to get her to give a

1
2 different answer. You have to accept
3 that answer whether you believe it or
4 not. Please let's not badger her.

5 Let's go on to another question.

6 MS. MCGRATH: I heard different
7 things from this witness in response to
8 things. I see her looking at me and
9 reacting to the question and I see her
10 say I spoke to counsel about it and a
11 number of other things and I'm asking
12 her if it's possible that she signed
13 this and doesn't remember and I don't
14 get an answer to that. I don't think
15 her answer is I don't recall and I'm
16 entitled to probe that.

17 MR. DONNER: I'm sure if we read
18 through the record we would find a
19 number of times you said you could
20 answer yes no or I don't recall.

21 MS. MCGRATH: That's true.

22 MR. DONNER: It's up to you what

23 you believe or don't believe, but an
24 answer is an answer. It's not evasive.
25 If you don't believe it, that your

1
2 choice, but the answer is specific I
3 don't recall. You cannot say is it
4 true you don't recall, is the answer
5 really no?

6 MS. MCGRATH: I don't believe
7 that you consider that exchange just
8 now not to be evasive because it
9 clearly was and I have the right to
10 probe the witness as to what she means
11 when she says I don't recall
12 particularly when she qualifies it with
13 the statement that she spoke to counsel
14 about it.

15 MR. DONNER: She answered your
16 question three or four times you asked
17 whether or not she responded?

18 MS. MCGRATH: Are you instructing
19 her not to answer the question?

20 MR. DONNER: Three or four times
21 she responded I don't recall.

22 MS. MCGRATH: Are you instructing

23 her not to answer?

24 MR. DONNER: If you find it

25 evasive or don't believe her you have

1
2 your own ways to respond to that. It's
3 been asked and answered. I will not
4 allow you to ask and answer the same
5 question for a fifth time.

6 MS. MCGRATH: I take that as an
7 instruction not to answer?

8 MR. DONNER: Not to allow you to
9 continue on badgering the witness and
10 I'm telling her if you ask the exact
11 same question again or as close as you
12 have there's no reason to respond a
13 fifth time because you don't believe
14 her.

15 MS. MCGRATH: I take that as an
16 instruction to the witness not to
17 answer. If I'm wrong I'll try again.

18 MR. DONNER: In this instance
19 given the set of circumstance I'm
20 instructing her not to answer.

21 MS. MCGRATH: Okay. Mark as the
22 next document which is Exhibit 112 a

23 single page document CAP 0019629 from
24 Richard Williams to Barbara Saepia
25 dated Wednesday, September 19, 2007.

1

2 Q. Do you recall receiving this
3 e-mail, Ms. Saepia, or actually there's two of
4 them?

5 A. I only see one e-mail.

6 Q. Do you have a single page with
7 two e-mail?

8 A. I have a single page.

9 MR. DONNER: We have different
10 documents actually.

11 MS. MCGRATH: Let's mark as 113.
12 The document is CAP 0021730.

13 Q. Have you had a chance to look at
14 these two e-mails?

15 A. One second.

16 Q. Do you recall receiving an
17 e-mail from Richard Williams on or about
18 September 19th to you saying Barbara, it has
19 come to my attention that you have not signed
20 and returned the extension agreement extending
21 the Fannie Mae construction phase financing
22 agreement for another six months to April 15,

23 2008. It's important that you complete this
24 requirement as soon as possible so that this
25 extension will be completed in a timely

1
2 fashion rather than at the last minute as was
3 the case for the last extension. Your
4 immediate attention to this matter will be
5 greatly appreciated. Do you recall receiving
6 that?

7 A. I believe I did.

8 Q. You didn't respond to this
9 either, did you?

10 A. I don't recall responding to
11 this.

12 Q. In fact it was a deliberate
13 decision on your part not to respond to this,
14 isn't that so, Ms. Saepia?

15 A. I don't recall responding to
16 this and I don't appreciate your categorizing.

17 Q. Was there any reason not to
18 respond to this, Ms. Saepia?

19 A. I was acting under the advice of
20 counsel.

21 Q. Is that why you didn't respond
22 to this, Ms. Saepia?

23 A. I'm saying that I was acting

24 under the advice of counsel.

25 Q. I'm not asking you to tell me

1

2 today what the advice was, but as you sit here

3 today do you remember what that advice was?

4 A. Yes, I do.

5 Q. We'll look at the e-mail above

6 that from Richard Williams to Barbara Saepia

7 Friday September 28 2007. It says Barbara,

8 you have had the extension letter since

9 8/22/07. It's your responsibility to take

10 care of this matter and I'm not aware of any

11 reason why you haven't done so. If there is a

12 problem, please let me know and perhaps I can

13 help. Otherwise, we are depending on you to

14 sign and return the extension letter

15 immediately. Dick. Do you recall receiving

16 that?

17 A. I probably received this e-mail.

18 It was addressed to me.

19 Q. You don't have any reason to

20 doubt that you received it, do you?

21 A. No, I don't.

22 Q. You didn't respond to this

23 e-mail either, did you, Ms. Saepia?

24 A. My actions were again as I say

25 in accordance to guidance by counsel.

1

2 Q. Whatever the advice was I don't
3 need to hear it, but your action was to not
4 respond to this e-mail; isn't that correct?

5 A. I don't recall if I responded to
6 this e-mail.

7 MS. MCGRATH: 114. We got a
8 document you haven't asked a question
9 about? I want to make sure my records
10 reflect what yours do.

11 MS. MCGRATH: I'm losing control
12 of the documents. Exhibit 114 is a two
13 page document CAP 44026 and 27. It's a
14 document containing e-mail beginning
15 with one at the top Carissa Lewis dated
16 Wednesday October 3, 2007 and it's
17 addressed among other people to Barbara
18 Saepia.

19 Q. We go to the bottom of the
20 string you could see Wednesday, August 22nd
21 e-mail Barbara, find attached please find
22 attached the extension letter from Belmont

23 Villas for your execution. Fannie Mae and
24 Citi have approved the extension and
25 signatures included. I have also sent the

1
2 letter to your construction lender for
3 signature. Should you have any questions
4 please feel free to contact me, thank you and
5 it's Carissa Lewis of Citigroup, do you see
6 that?

7 A. Yes.

8 Q. Do you recall receiving that
9 e-mail from her and the attachment that it
10 refers to?

11 A. I probably received this. It's
12 addressed to me yes.

13 Q. Then she follows up with you on
14 the September 20th and Barbara as a reminder
15 the Belmont Villas extension letter and fees
16 are due by October 12th. Your signature is
17 requested on pages 6, 7 and 8. I have
18 attached the extension letter and invoice for
19 your convenience. Wire instructions are
20 included in the invoice. However should you
21 have questions please feel free to contact me.
22 Thank you. Did you contact Carissa Lewis?

23 A. I don't believe I contacted

24 Carissa Lewis.

25 Q. Contact anybody else at Citi

1

2 during this period of time?

3 A. I was not dealing with Citibank.

4 Q. I don't know if you are drawing

5 a distinction between Citibank and Citi --

6 some other Citi entity but Ms. Lewis is with

7 Citigroup?

8 A. I meant Citigroup.

9 Q. When you say you were not

10 dealing with them, she was communicating with

11 you isn't; that that right?

12 A. She sent me -- Carissa Lewis did

13 send me this e-mail on that date.

14 Q. She also said if you have any

15 questions please call me, correct?

16 A. That's what she writes.

17 Q. It is your belief that you did

18 not call her, is that your testimony?

19 MR. DONNER: Just I think it says

20 if you have any questions please

21 contact me.

22 Q. Did you contact her?

23 A. I don't remember contacting

24 Carissa Lewis regarding this e-mail.

25 Q. Then there's another follow up

1

2 October 3, 2007 again from Carissa Lewis again

3 saying the signature pages are due by October

4 12th. Should you have any questions please

5 contact me. Thank you. Did you contact her,

6 Ms. Saepia?

7 A. I don't remember again

8 contacting Carissa Lewis in reference to her

9 e-mail.

10 Q. Did you contact Ms. Lewis in

11 some other context?

12 A. Be specific.

13 Q. You said I don't remember

14 contacting Carissa Lewis in reference to her

15 e-mail and my question was did you contact her

16 in some other context?

17 A. At some point in time I did

18 speak with Carissa Lewis.

19 Q. Was it some time after these

20 e-mails, these September and October e-mails?

21 A. I believe that was the case.

22 Q. What did you understand would

23 happen if you didn't sign the agreement, Ms.

24 Saepia?

25 A. I believe the agreement could

1

2 have been signed by a Capmark entity.

3 Q. If you were wrong about that and

4 the Capmark entity could not make that

5 signature to Fannie Mae's satisfaction what

6 would happen?

7 A. That was not the case.

8 Q. Are you certain of that?

9 A. Ask me am I certain of what?

10 Q. Are you certain that that was

11 not the case?

12 A. Are you asking if they got an

13 extension, is that the question?

14 Q. It's not what I'm asking you.

15 What would have happened if no one signed that

16 extension agreement and what would have

17 happened?

18 A. If no one signed an extension

19 agreement it would not have gotten the Fannie

20 Mae extension.

21 Q. Then what would have happened?

22 A. Fannie Mae would no longer be

23 part of this transaction if no one signed

24 anything.

25 Q. What does that mean that Fannie

1

2 Mae would no longer be part of this
3 transaction?

4 A. This was a Fannie Mae loan.

5 Q. Ms. Saepia, did you understand
6 that part of what Fannie Mae's will in this
7 transaction was to provide a credit
8 enhancement agreement?

9 A. Yes.

10 Q. And that was what was supporting
11 the bond issue, did you understand that?

12 A. Yes.

13 Q. Did you understand that if that
14 credit enhancement was not there there would
15 be a default under the bond? What did you
16 understand would happen if Fannie Mae did not
17 extend its credit enhancement agreement?

18 A. I believe the bond would have to
19 be repurchased.

20 Q. Did you understand yourself to
21 be a guarantor of Capmark's obligation to
22 repurchase the bonds?

23 A. I believe I was.

24 Q. So did you take into account in

25 not signing this extension the possibility

1

2 that you would have to step up to your
3 guarantee of Capmark's obligation to
4 repurchase the bonds?

5 A. Say the question again, I missed
6 it.

7 (Record read.)

8 A. I considered ramifications if I
9 did sign the agreement.

10 Q. Perhaps we can talk about that
11 in a moment, but my question to you was in
12 making the decision not to sign it did you
13 take into account the possibility that you
14 would have to step up to your guarantee?

15 A. I discussed those issues with
16 counsel at this time.

17 Q. You say that you considered the
18 consequences if you did sign it. Was that
19 your answer a moment ago?

20 A. Yes.

21 Q. We had before us an exhibit an
22 earlier Fannie Mae extension, Exhibit 106

23 dated March 15th and I believe we established

24 that the forms are essentially the same, they

25 make the same provision?

1

2 A. That seems to be the case, yes.

3 Q. So whatever the consequences

4 would be of your signing in August or

5 September or early October the second Fannie

6 Mae extension would be no different would they

7 than the consequences of signing the March

8 15th one?

9 A. No, I disagree with that

10 assumption.

11 Q. On what basis?

12 A. The financial status of the

13 project had changed I believe.

14 Q. How had it changed?

15 A. There were more cost over runs

16 by the end of the year.

17 Q. How else had it changed?

18 A. That was the major issue, the

19 financial status of the project had changed.

20 Q. You were aware, were you not,

21 that Capmark was continuing to fund the draw

22 requests for the project?

23 A. At what point in time are we

24 talking about?

25 Q. Right up until the end, right up

1

2 until October 2007, you knew that, didn't you?

3 A. I had no idea what was happening

4 in 2007 with draw requests.

5 Q. You were getting information

6 directly from Racanelli and Fellman, weren't

7 you, as to what was going on with the draw

8 request and funding of the project?

9 A. Are you talking about in 2007?

10 Q. Yes.

11 A. That's not correct.

12 Q. Is your testimony you did not

13 receive information from Racanelli and Fellman

14 and others that showed that the project was

15 still being funded?

16 A. I don't recall receiving any

17 information at that point in time.

18 Q. Did you have any reason to

19 believe that the project was not being funded?

20 A. I could not tell what was being

21 funded or what was not being funded. I did

22 not have the financial information which I had

23 requested.

24 Q. Did you call up and say Capmark,

25 are you still supporting this project, are you

1

2 still funding the draw request?

3 A. Numerous requests had been put

4 into Capmark requesting financial status. I

5 could not tell what was being funded, what was

6 not being funded. I was not privy to that.

7 Q. I'm not asking you whether you

8 knew what was and was not being funded, I'm

9 asking a more general question, Ms. Saepia.

10 You were aware were you not that Capmark was

11 continuing to fund the project as a general

12 matter?

13 A. I don't know what Capmark was

14 doing regarding the project since I did not

15 have any of the financials which I requested

16 so I could not make a decision based on

17 something I didn't have.

18 Q. You would have known wouldn't

19 you if Capmark had stopped paying Racanelli

20 and Fellman and others involved in this

21 project, correct?

22 Ms. Saepia, among other things

23 you could go to the project and see people

24 were still working, couldn't you?

25 A. I often went to the project and

1

2 saw no one was working.

3

MR. DONNER: We had a

4

conversation a little bit earlier how

5

late we would go and I said I would not

6

interrupt you mid question. It's 6:15

7

now. I say we go until 6:30 today.

8

MS. MCGRATH: We have to mark her

9

letter. Obviously I have my position

10

on that and I'll go ahead and truncate

11

out of the practical need to do so but

12

certainly over my objection. I'm going

13

to mark as 115 an October 8, 2007

14

letter from Barbara Saepia to Richard

15

Williams.

16

Q. Is that your signature, Ms.

17

Saepia?

18

A. Yes.

19

Q. Did you draft this letter?

20

A. No.

21

Q. Counsel drafted this letter?

22

A. Yes.

23 Q. Why is it addressed to Mr.

24 Williams?

25 A. He was the asset manager.

1

2 Q. Did you send it to anybody else?

3 A. I just see this being addressed

4 to Mr. Richard Williams so I don't know if it

5 went to anybody else, but I know it went to

6 Mr. Williams.

7 Q. You say in this letter it's

8 impossible for me to provide you with the

9 letter you have requested on behalf of Belmont

10 Villas LLC, correct?

11 A. That's what this letter says.

12 Q. We can agree or disagree as to

13 whether it was or was not impossible for you

14 but can we agree this is a letter by which you

15 inform Mr. Williams that you are not going to

16 sign the Fannie Mae extension letter?

17 A. Yes. This letter is requesting

18 them to be redirected to Protech.

19 Q. Your answer remains, Ms. Saepia,

20 yes, your answer to the question whether by

21 this letter you informed Mr. Williams that you

22 were not going to sign the Fannie Mae

23 extension letter?

24 A. I felt that I could not sign

25 this Fannie Mae extension letter.

1

2 Q. The question that I asked you
3 before and the answer that you gave was as
4 follows. Can we agree that this is a letter
5 by which you informed Mr. Williams that you
6 are not going to sign the Fannie Mae extension
7 letter and you answered yes. You are not
8 changing that testimony, are you?

9 A. No, he was being notified that I
10 could not sign this extension letter.

11 Q. When you before said the answer
12 was yes to my question, it's still yes, isn't
13 it?

14 A. That I told him that I would not
15 sign the extension letter?

16 Q. Yes.

17 A. I believe this is what this
18 letter is saying. I was not able to sign the
19 extension letter.

20 Q. Whether you were able to or not
21 is another question.

22 A. I didn't finish stating my

23 answer.

24 Q. Go ahead, finish.

25 A. I lost my sense of what I was

1

2 saying.

3 Q. Whether or not you were able is
4 another issue that we can debate another day,
5 the question I put to you is you were telling
6 Mr. Williams that you were not going to do it,
7 is your answer to that question still yes?

8 A. Yes.

9 MS. MCGRATH: Mark as Exhibit 116
10 an October 10, 2007 letter from David
11 Sebastian to Barbara Saepia.

12 Q. I take it you are familiar with
13 this letter, Ms. Saepia?

14 A. I have seen it, but I have not
15 -- I want to re-read it.

16 Q. Do you recall receiving this
17 letter?

18 A. Yes.

19 Q. Were you surprised when you
20 received this letter?

21 A. I believe I was.

22 Q. Is this not a possibility that

23 you contemplated would occur?

24 A. I would not contemplate

25 receiving a notice of removal, no.

1

2 Q. On the second page in the
3 paragraph that begins on there there's a
4 reference to a number of issues. Well, let me
5 begin with the sentence among other defaults
6 and violations under the operating agreement
7 it's undisputed that and then there is a
8 paragraph full of points that are made by the
9 letter?

10 A. Yes.

11 Q. The first one is that by
12 correspondence dated October 8, 2007 the court
13 has refused to execute the Fannie Mae
14 extension agreement in connection with the
15 mortgage loan commitment or pay the required
16 extension fee in the amount of \$45,637.50.
17 Putting aside the issue of the fee, I believe
18 we have just established on the record that in
19 fact it's accurate that you did say in that
20 October 8, 2007 letter that you were not going
21 to sign the Fannie Mae extension agreement?

22 A. That I could not sign that

23 Fannie Mae extension letter.

24 Q. We had a lot of questions back

25 and forth about could not and would not, but I

1

2 think we established with some clarity on the
3 record whether you could or you couldn't, you
4 were telling Capmark you were not going to do
5 it?

6 A. There's a difference between
7 could not and would not. I could not sign
8 that Fannie Mae extension letter.

9 Q. Do you want me to go back over
10 the record we can, but I believe you said that
11 your letter informed Fannie Mae that you were
12 not going to sign that extension agreement?

13 A. Informed.

14 Q. Informed Capmark?

15 A. Mr. Williams that I felt that I
16 could not sign the -- has excluded me from any
17 duties concerning this project and has
18 withheld from me information concerning this
19 project. Hence it is impossible for me to
20 provide the letter you requested on behalf of
21 Belmont Villas. That's what this letter says.

22 Q. Was it your intent to convey to

23 Capmark that maybe you might under some
24 circumstance sign this letter or was it your
25 intention to say I'm not going to do it?

1

2 A. Under the circumstances being
3 that I have been withheld from information I
4 felt that I could not sign that Fannie Mae
5 letter.

6 Q. We can go back over the record,
7 but are you changing your prior testimony when
8 you said in answer to my question yes that you
9 were telling -- take that back. Are you
10 changing your prior testimony with respect to
11 the meaning of your letter to Mr. Williams
12 dated October 8th?

13 A. I'm saying that perhaps I am
14 changing. What I meant to say I could not
15 sign the Fannie Mae letter.

16 MS. MCGRATH: I think we now have
17 the witness saying she's changing her
18 testimony at an essential point in this
19 litigation and that alone I would say
20 requires that we have more time with
21 this witness.

22 MR. DONNER: I don't think she

23 changed at all impossible and could not

24 are exact same thing. I think it's

25 6:30 and nobody is thinking clearly.

1

2 The letter says it's impossible and she
3 said could not. I don't think it's a
4 change at all.

5 Q. Let me put it this way. Is it
6 your testimony that your letter was intending
7 to say I cannot so therefore I will not sign
8 this extension letter?

9 A. My intention was exactly what's
10 in the letter. Is it possible for me to
11 provide you with a letter that you have
12 requested, I could not sign this letter, the
13 Fannie Mae extension.

14 Q. Was your letter intended to say
15 I cannot so therefore I will not sign this
16 extension letter?

17 A. My intention was to say that I
18 could not sign this letter, that was my
19 intention.

20 Q. Was it your intention to also
21 say and I will not?

22 A. My intention was to say that I

23 could not sign this letter.

24 Q. I have a separate question which

25 is was it also your intention to say and I

1

2 will not?

3 A. I said it's impossible for me to
4 sign this letter.

5 Q. You may have given Mr. Williams
6 reasons as to why it was impossible for you,
7 but it was also the case, Ms. Saepia, that you
8 were telling him therefore I will not sign it?

9 A. What I'm saying --

10 MR. DONNER: That's not even a
11 question. You didn't ask a question so
12 there's nothing to answer.

13 Q. It was also the case, wasn't it,
14 that you were telling Mr. Williams therefore I
15 will not sign it?

16 A. What I'm telling -- what I told
17 Mr. Williams and I'll repeat it again I said
18 it's impossible for me to provide you with the
19 letter you have requested on behalf of Belmont
20 Villas. That's what my intention was in this
21 letter.

22 Q. And therefore you would not sign

23 it, right?

24 A. Therefore it was impossible for

25 me to sign the letter.

1

2 MS. MCGRATH: I really do think
3 we have a problem here because I think
4 we went through this before and we had
5 some clarity on the issue and I think
6 we now do not and unless you are
7 willing to stipulate that those answers
8 that were given earlier are in fact
9 still Ms. Saepia's testimony I think we
10 have to come back to this issue.

11 MR. DONNER: We're not coming
12 back to any issue whatsoever short of a
13 magistrate's order.

14 MS. MCGRATH: That's fine, we'll
15 get the magistrate's order.

16 MR. DONNER: Obviously the
17 magistrate overrules me and you but the
18 letter speaks for itself. It's a
19 letter. You spent the last five
20 minutes trying to see if there's some
21 hidden meaning or other meaning and you
22 heard there isn't and you don't like

23 the fact you haven't had the answer you

24 want.

25 MS. MCGRATH: It's a very

1

2 straightforward question.

3

MR. DONNER: You mean what does

4

the letter say?

5

MS. MCGRATH: Does the letter say

6

I'm not going to sign it?

7

MR. DONNER: That's very simple,

8

it doesn't say that. You show me where

9

it does say that.

10

MS. MCGRATH: That's precisely,

11

Mr. Donner, why I asked her was it her

12

intention to convey that message and I

13

believe she said yes so therefore we

14

moved on and now we're going back and I

15

don't know whether she has or she has

16

not changed that answer and I can't

17

tell from what's going on here and

18

that's why I'm saying if she has

19

changed it, we have to come back to it.

20

MR. DONNER: Since it's now 6:30

21

why don't I give you an extra minute to

22

answer that question. I don't want to

23 leave you in mid question. Ask the
24 question you think you need to ask,
25 let's get the answer and we can finish.

1

2 Q. Earlier in our exchange I asked
3 you, Ms. Saepia, whether it was your intent to
4 convey by the October 8, 2007 letter the
5 message that you were not going to sign the
6 Fannie Mae extension agreement and you recall
7 that your answer was yes?

8 A. If that answer was yes then I
9 misspoke. What I meant to say is that it's
10 impossible to provide the letter. That was my
11 intention of what I meant to say.

12 MR. DONNER: Are you one question
13 from finishing? It's 6:30. It's past
14 6:30.

15 MS. MCGRATH: We have a witness
16 who just retracted a very important
17 piece of testimony and I do not agree I
18 should be cut off from pursuing it
19 further with her.

20 MR. DONNER: You can think you
21 could depose her from now until hell
22 freezes over. It's now past 6:30.

23 MS. MCGRATH: Fine, we'll bring

24 it up with the magistrate.

25 MR. DONNER: It's 6:30. I think

1

2 we will finish now okay. I tried to --

3 MS. MCGRATH: Are you saying you

4 will not answer any further questions,

5 you are leaving?

6 MR. DONNER: I'm not going to

7 answer any questions but the answer to

8 your question is we discussed this

9 hours ago and we discussed it again at

10 6 and again at 6:15 and I said let's

11 break at 6:30.

12 MS. MCGRATH: I didn't expect the

13 witness to change her testimony on a

14 critical issue.

15 MR. DONNER: And she didn't so

16 that was good that you didn't expect

17 it.

18 MS. MCGRATH: She just did.

19 MR. DONNER: You want to spend

20 the whole day arguing. We might as

21 well, you go to the magistrate, you

22 explain you don't like the way the

23 witness answered your question and if

24 she says yes, we will be back here and

25 it's that simple. I think we are

1

2 finished. I know we are finished.

3 MS. MCGRATH: I do have other

4 questions on this document and a follow

5 up to these documents and it is what it

6 is. If you are leaving you are

7 leaving.

8 MR. DONNER: As per what we

9 discussed and put on the record yes, we

10 are. We agree to disagree, but we are

11 finished.

12 THE VIDEOGRAPHER: That concludes

13 today's deposition of Barbara M.

14 Saepia. We're now off the record at

15 approximately 6:34 p.m., June 11, 2009.

16 (Time noted: 6:34 p.m.)

17

18

19

20